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Before the

U.S. SECURITIES & EXCHANGE COMMISSION

In the matter of the Appeal of KIMBERLY SPRINGSTEEN-ABBOTT,	**APPEAL** **OF N.A.C. Decision in** **Complaint No. 2011025675501** **Kimberly Springsteen –Abbott** **ADMIN PRO.3-17560** **ORAL ARGUMENT REQUESTED**

APPELLANT'S REPLY MEMORANDUM OF LAW

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Appellant Kimberly Springsteen-Abbott ("Appellant") respectfully submits this memorandum of law in reply to FINRA's Brief In Opposition To The Application For Review and in further support of her appeal from an August 23, 2016 decision (the "NAC Decision") of the National Adjudicatory Council ("NAC") that permanently barred her from the securities industry; ordered her to disgorge $208,953.75 to FINRA; fined her $100,000; and ordered her to pay costs of $11,037.14.

PRELIMINARY STATEMENT

In its opposition brief, FINRA admits that "[t]he NAC's finding does not state that Springsteen-Abbott intended to destroy or harm the Commonwealth Funds – nor was that ever alleged." (FINRA Brief at 24 n.10.) Yet FINRA continues to assert that the NAC acted properly in upholding a permanent bar of Appellant from the securities industry because Fund investors were harmed by some expenses that were inadvertently allocated to the Funds when they should not have been (and which allocations have been reversed). As shown in Appellant's opening brief and as further discussed below, the NAC and FINRA have treated Appellant in a fundamentally unfair manner and their conclusions are wrong for numerous reasons, including that:

i. the NAC's finding that Appellant acted in bad faith and unethically is not supported by the evidence, is clearly erroneous, and is fundamentally unfair;

ii. the NAC's finding that Appellant unethically submitted 1,840 expense reimbursement requests is unsupported by the evidence, is clearly erroneous, and is fundamentally unfair;

iii. the NAC Decision is fundamentally unfair in erroneously accepting assertions by FINRA of allegations that were not charged in the Amended Complaint but were

referenced inaccurately before the Hearing Panel below, and FINRA asserts here new arguments not made below; and

iv. FINRA's Opposition Brief unfairly asserts unproven and erroneous information *not* contained in the record or twists evidence in the record.[1]

As discussed below, not only is a permanent bar an overly severe remedy here but, based on the evidence presented, the entire finding against Appellant in the NAC Decision (and in the Hearing Panel Decision below) is clearly erroneous and fundamentally unfair and thus should be reversed. Simply put, these decisions are contrary to the letter and spirit of Section 15A(b)(8) of the Securities Exchange Act of 1934, which require that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

ARGUMENT

I. THE NAC'S FINDING THAT APPELLANT ACTED IN BAD FAITH AND UNETHICALLY IS UNSUPPORTED BY THE EVIDENCE, IS CLEARLY ERRONEOUS AND IS FUNDAMENTALLY UNFAIR

As discussed in Appellant's opening brief (at pages 10-11 and 20-23), the NAC found that Appellant acted in bad faith and unethically even though uncontroverted evidence was presented establishing that Appellant voluntarily contributed over $2.4 million to the Funds during the time that she was found to have misallocated $208,000 in expenses. Indeed, in its opposition brief FINRA concedes that Appellant made "the $2.4 million contribution." (FINRA Brief at 31.)

After conceding in its brief that Appellant made the $2.4 million in contributions to the Funds, FINRA argues that the contributions are somehow irrelevant because (i) some of this amount represented "liabilities owed [by the Funds] to Commonwealth Capital Corp. or the

[1] This reply brief will address the primary errors made by FINRA in its opposition brief rather than addressing each and every point discussed by FINRA. Points not addressed in this reply brief are not waived, however; rather, Appellant relies on the arguments set forth in her moving brief.

General Partner that Springsteen-Abbott, acting as CEO of Commonwealth Capital Corp., elected not to charge against the Commonwealth Funds"; and (ii) her $2.4 million contribution to the Funds "is immaterial to the NAC's findings that Springsteen-Abbott engaged in unethical misconduct and acted in bad faith." (FINRA Brief at 31-32.) Once again FINRA, as did the NAC, ignores the facts and misses the point.

With respect to the first point, FINRA is simply wrong in stating that that the $2.4 million was not "an altruistic cash donation from Springsteen-Abbott's pocket" (FINRA Brief at 31). The money *did* come from Appellant, who was under no legal obligation to make the contributions or waive or forgive fees. Whether the money came *directly* from her pocket or *indirectly* from companies that she wholly owns (Commonwealth Capital Corp and its subsidiary, the General Partner of the Funds) is irrelevant – either way, the $2.4 million in contributions to the Funds meant that Appellant had $2.4 million less and the Funds had $2.4 million more. Further, Appellant's contributions fit the dictionary definition of altruistic – "unselfishly concerned for or devoted to the welfare of others."[2] Here, Appellant's actions were for the benefit and welfare of the Funds' investors rather than herself. Appellant's contributions to the Funds also make it clear that the Appellant did not receive and retain any personal profit at the expense of the Funds and therefore disgorgement, which is intended to recapture an unlawful retention of a benefit, is unwarranted and erroneous.[3]

With respect to the second point, FINRA argues that the "SEC and FINRA have consistently rejected such a 'self-help' defense in the past" and that Appellant cannot use her

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[2] www.dictionary.com

[3] As stated above, in light of the fact that Appellant did not act unethically or in bad faith and did not receive any personal profit, disgorgement of *any* amount is fundamentally unfair and inappropriate. Furthermore, it is certainly unfair and erroneous that the NAC ordered disgorgement of $208,953 when FINRA's Department of Enforcement (the "DOE") itself at the hearing conceded that the $208,000 figure was not proven and that the DOE's number was only approximately $174,000.

contribution as an "offset" (FINRA Brief at 32). Again, FINRA and the NAC miss the point. Appellant was *not* submitting improper expenses in order to engage in "self-help" to recover monies owed to her; indeed, there is no evidence in the record that she even knew of any improper allocations at the time the contributions were made. Nor was Appellant asking the NAC to "offset" the $208,000 in expenses at issue against the $2.4 million that she contributed. *Rather, Appellant argued that the fact that she voluntarily contributed $2.4 million to the Funds conclusively demonstrates that she did not act unethically or in bad faith.*[4] In other words, the inference underlying the NAC Decision that Appellant unethically wanted to unjustly enrich herself by improperly misallocating expenses to the Funds so she could 'live off the Funds" is illogical. If Appellant had wanted to avail herself of the additional $208,000 at issue here, she simply would have reduced her voluntary contributions to the Funds by that amount. Appellant submits that her $2.4 million voluntary contributions to the Funds demonstrates that she always tried to place the interests of the Funds first but, unfortunately, a flawed method for handling the reimbursement process led to occasional unintentional errors, errors which have been corrected.

The cases that FINRA cites in its brief (at 32-33) in opposition to Appellant's argument are inapposite and readily distinguishable. For example, in *Denise M. Olsen*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (SEC Sept. 2, 2015), Olsen admitted that she used a firm credit card to purchase personal items and knowingly and falsely told the firm that she had purchased office equipment. Thus, she admitted to acting unethically and in bad faith, as the SEC found: "Olsen **admit[ted]** that she violated the Rule [2010] by falsifying an expense report and converting Firm funds" (emphasis added). The SEC then refused to excuse Olsen's admitted

[4] Appellant is not arguing that her $2.4 million voluntary contribution made any improper expense allocations proper (she readily acknowledged that when an erroneous control person allocation occurred the Funds were entitled to a refund) and Appellant is not arguing that any particular misallocated expense was offset by a voluntary contribution to the Funds or a self-help defense in the same amount.

unethical conduct based on a self-help or offset defense "that she [personally] paid more for ... two refrigerators" for her branch office.

Similarly, in *Dep't of Enforcement v. Doan*, Complaint No. 2009019637001, 2011 FINRA Discip. LEXIS 56 (FINRA Hearing Panel Sept. 19, 2011), there was no issue that Doan had acted unethically. This case involved Doan's submission for reimbursement of six invoices for use of a conference facility. At the hearing, Doan "stipulated that he submitted falsified invoices in order to obtain money from his employer ... for expenses that he never incurred, for rental of a conference room that he did not use."[5] The FINRA Hearing Panel rejected Doan's "self-help" contention that he received the money because he was entitled to reimbursement for office furniture, stating that this contention "provides no defense," citing a prior FINRA Panel decision in *Dep't of Enforcement v. Saad*, Complaint No. 2006006705601, 2009 FINRA Discip. LEXIS 29 (FINRA NAC Oct. 6, 2009).[6]

In the *Saad* case (also cited by FINRA in its brief), Saad "d[id] not dispute the underlying facts" that he "misrepresent[ed] that he had taken a business trip that he did not in fact take, creating fake receipts with counterfeit logos, and submitting false receipts and reimbursement reports." The Panel found Saad's conduct to be unethical and stated that it was not mitigated by his contention that his admittedly fabricated and false expense reports "constituted a 'wash' as compared to legitimate business expenses that he incurred ... for which he ha[d] not sought reimbursement."[7]

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[5] Doan further stipulated as fact that he fabricated the six invoices.

[6] *Aff'd*, Exchange Act Release No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010), *remanded on other grounds*, 718 F.3d 904 (D.C. Cir. 2013).

[7] The final case cited by FINRA in this section of its opposition brief, *Thomas W, Heath, III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14 (Jan. 9. 2009) *aff'd*, 586 F.3d 122 (2d Cir. 2009), does not involve expense reimbursements and is therefore inapposite. In that case, a NYSE Hearing Panel found that Heath's disclosure of confidential information concerning an investment banking transaction "while certainly lacking any malevolent or deceitful quality – were, in the final analysis, self-serving in that they were intended to gain the trust of ... a soon-to-be colleague." The SEC affirmed, finding that Heath's actions constituted "unethical conduct ... in disclosing

Thus, the cases cited by FINRA in this section of its opposition brief are readily distinguishable and unfairly made because they involved instances where individuals admitted to engaging in unethical conduct by deliberately submitting false and/or fabricated expense reimbursement requests and then argued that their unethical conduct should be excused because they had engaged in self-help with respect to offsetting expenses they could have submitted. In Appellant's case, she did not claim a "self-help" defense or claim an "offset." More importantly, in Appellant's case there is *no* admission of unethical conduct; rather, Appellant has acknowledged that some expenses were erroneously reimbursed due to faulty accounting and reimbursement procedures *but that the errors were not made unethically and only asserts that her voluntary contribution of $2.4 million to the Funds – over ten times the amount of the $208,000 at issue – negates any finding that she acted unethically or in bad faith.*

Accordingly, the finding in the NAC Decision that Appellant acted unethically and in bad faith is unsupported by the evidence, clearly erroneous, and fundamentally unfair. FINRA's continued argument to the contrary is simply wrong.

II. THE NAC'S FINDING THAT APPELLANT UNETHICALLY SUBMITTED 1,840 EXPENSES FOR REIMBURSEMENT IN BAD FAITH IS UNSUPPORTED BY THE EVIDENCE, IS CLEARLY ERRONEOUS AND IS FUNDAMENTALLY UNFAIR

As discussed in Appellant's opening brief (at pages 9-10 and 18-20), the NAC found that Appellant acted in bad faith and unethically with respect to 1,840 expense items even though the DOE only presented evidence supporting its objections to the allocation of approximately 2% of these alleged improper charges.[8] For the remaining 98%, the DOE simply presented a series of

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confidential client information, Heath violated one of the most fundamental ethical standards in the securities industry."

[8] As explained above and in her moving brief, Appellant submits that even with respect to this small number of expense items, FINRA did not meet its burden of proving unethical or bad faith conduct. For example, as set forth at page 33 of Appellant's opening brief, the record does not contain any evidence that Appellant knew of or directed

spreadsheets setting forth all expenses in the same category, and then argued, despite the objection of Appellant, that (i) its "proof" regarding one item on a list established Appellant's unethical and bad faith conduct with respect to every other item on the list, and (ii) the introduction of information about these few items shifted to the Appellant the duty to counter the unsupported allegations with respect to all 1,840 items.

Based on this failure of evidence, the NAC found that Appellant had acted unethically and in bad faith with respect to over 1,800 expense items, stating:

> Enforcement has the burden of proving a prima facie case based on a preponderance of the evidence that Springsteen-Abbott committed the alleged violation.... *The entire itemized list of the 1,840 charges at issue was presented and accepted into evidence*.... We find that, based on the evidence presented, *Enforcement established its prima facie case of her alleged violation. An explanation detailing each of the 1,840 itemized charges was not presented. Upon establishing a prima facie case, the burden shifted to Springsteen-Abbott to either discredit or rebut the evidence presented*, which she failed to successfully do.

NAC Decision at 10 (emphasis added; citations omitted). The fact that the NAC erroneously relied on the spreadsheets listing the 1,840 items, rather than any proper evidence to support its findings, is demonstrated by the fact that the NAC ordered disgorgement for all 1,840 items in the amount of $208,953, even though the DOE conceded at the hearing that it had incorrectly included numerous items among the 1,840 and had reduced its demand for disgorgement to approximately $174,000.

In its opposition brief, *FINRA does not even mention, let alone attempt to refute, the three cases cited at page 19 of Appellant's opening brief, which set forth the well-established law regarding the burden of proof that the DOE and now FINRA is required to meet in the*

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any improper allocation at the time the allocations were made, and there is no evidence that Appellant rigorously reviewed the Amex charges to determine allocations. Rather, Appellant "fiercely" reviewed the Amex bills to ensure that no improper charges appeared; she did not "fiercely" review allocations and she testified that she did not review most allocations.

presentation of its case. Nowhere in its brief does FINRA dispute that it is *FINRA's* burden of proof to establish its case. Rather, FINRA just repeats its incredible position: "As the NAC stated, the entire itemized list of the 1,840 American Express charges was admitted into evidence. RP 7894. It was Enforcement's burden to establish a prima facie case that Springsteen-Abbott committed the alleged violation by a preponderance of the evidence." (FINRA Brief at 17.) FINRA argues that "the NAC's basis for its findings was not limited to the expenses Enforcement addressed before the Extended Hearing Panel at the hearing as Springsteen-Abbott suggests. All relative [sic] documentation that was accepted into evidence from both of the parties informed the NAC's conclusions." (FINRA Brief at 17-18.) This argument is unavailing.

To begin with, FINRA now admits that it addressed only "limited" expenses. Moreover, the mere fact that the 1,840 expense report submissions themselves (and other such "relative" [sic] documents) were introduced into evidence in addition to the DOE's spreadsheets of the 1,840 items does not change things. The simple fact is that (i) *no evidence demonstrating unethical or bad faith conduct* was presented with respect to 98% of the expenses at issue,[9] and *(ii) no attempt was made to introduce evidence that all 1,840 items were not valid business expenses*, and no clever twisting by FINRA of the well-established concepts of prima facie case and burden of proof can change this fact. Contrary to FINRA's assertion, DOE neither "specified" the vast majority of the allegedly "improper expenses" nor "explained they were personal or nonrelated expenses." Thus, FINRA's conclusion that "there was ample evidence to

[9] As explained above and in her moving brief, Appellant submits that even with respect to the 2%, FINRA did not meet its burden of proving unethical or bad faith conduct. For example, FINRA had no basis to allege – and the NAC had no basis to find – that Continuing Education expenses for non-registered personnel of the General Partner whose duties related to the Funds were improperly allocated as charges to the Funds. There is no reason that a business judgment that such expenses are properly allocable should be rejected.

show that Springsteen-Abbott misused the Commonwealth Fund monies" is clearly erroneous and fundamentally unfair. (FINRA Brief at 17.) [10]

The cases cited by FINRA in its brief are unavailing. For example, at page 18 of its brief FINRA cites *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989 (June 2, 2016) for the proposition that "[i]t is well established that 'circumstantial evidence' can be more than sufficient to prove a violation of the securities laws." Of course, spreadsheets listing the expenses at issue plus copies of the expenses themselves are not probative "circumstantial evidence." The "circumstantial evidence" in the *Butler* case involved, *inter alia*, the broker taking money from an elderly incompetent woman's account, changing her account address to his own address, making himself the beneficiary of her annuity, paying his taxes by using her funds and falsely holding himself out as her son. In Appellant's case, the so-called circumstantial evidence is merely spreadsheets listing the expenses and the underlying expenses themselves – a far cry from the "circumstantial evidence" in *Butler*.

Perhaps FINRA's and the NAC's hostility to Appellant's position is explained by FINRA's continued argument (in a brief heading, no less) that "Documents [Appellant] Created Were Backdated." (FINRA Brief at 23; *see also* FINRA Brief at 26 ("Springsteen-Abbott backdated the tick sheets using the date that the charge was incurred").) That statement is false and was not part of the charges made against Appellant. The simple fact is that, while the regulatory inquiry and subsequent hearing were being conducted, Appellant created certain documentation with respect to some of the expense items and submitted them; many of these materials contained the date of the underlying expense at issue so that all concerned would know

[10] Appellant continues to maintain that the NAC incorrectly applied the wrong burden of proof standard, utilizing the preponderance of the evidence standard rather than the clear and convincing standard. Nevertheless, even under a preponderance of the evidence standard, FINRA has failed to meet its burden of proof in this matter.

what the documents related to, and FINRA examination and enforcement staff who came to Philadelphia to inspect these items were told that they were not contemporaneous to the expense except for actual receipts or bills. *Neither Appellant nor her counsel ever told FINRA or the Hearing Panel that these "tick sheets" were pre-existing documents from the date of the underlying expense. Rather, they were told that these additional documents helped to explain or tie together some of the expenses at issue.*[11] Nevertheless, FINRA argued, and the Hearing Panel and the NAC agreed, that these documents were "backdated" and this unfounded conclusion appears to underlie much of the Hearing Panel's and the NAC's erroneous conclusions and animosity towards Appellant.

Likewise, FINRA has presented no evidence that Appellant knew of or directed any improper allocation at the time the allocations were made, and there is no evidence that Appellant rigorously reviewed the American Express charges to determine allocations. Rather, Appellant "fiercely" reviewed the Amex bills to ensure that no improper charges appeared; she did not 'fiercely" review allocations and she testified that she did not review most allocations. There is no evidence that she "reviewed and approved" all final allocations (FINRA Brief at 7).

There is no evidence that Appellant "rigorously reviewed the American Express bills to determine which charges would be allocated to [the Funds]" (FINRA Br. 6). This is unsupported by evidence or record citation. Appellant did testify that she would review the Amex bill charges: "[I did] review the account *activity* fiercely," (R. 1459. emphasis added), not that she reviewed the "allocations" "fiercely" to, in FINRA's words, "determine how expenses ... should be allocated" (FINRA Br. 6). FINRA's assertion is simply a fabrication. She testified she did not review most of the individual allocations. (See, e.g., Opening Br. at 33; Tr. at 563-64.) She

[11] And, as explained in Appellant's opening brief, FINRA was clearly moved by some of these so-called backdated documents as it first amended its original charge to delete certain items and then, during the hearing, admitted that certain other expense submissions were proper.

reviewed the Amex bills to confirm that the bills were correct, to monitor use of the card, which many others used, and to make a few infrequent notes about allocations.

FINRA in fact admits that only "some items" on the Amex statement (id.at 6) had her notes relating to the allocation of expenses. In fact, there were very, very few such notes (CX 6, Amex bills, R 2249 et seq.), which simply emphasizes that the broad contentions of FINRA to the effect that she directed each allocation are unsupported.

Appellant did "approve" the final allocations, but FINRA distorts the record by stating that she "reviewed and approved" all final allocations. (FINRA Br. 7.) She initialed a cover page summary of the total amounts being allocated to each Fund, Commonwealth Capital Corp. and other entities, as submitted to her by accounting personnel, which authorized those entries (R1434, Franceschina), but did not study or "review" the extensive backup support. (Appellant's Opening Brief 1-2 & 33.) Nor does FINRA explain how or why a CEO would be able to carefully review each of the 7,500 items on the Amex statements that had to be allocated among thirteen Funds and three companies. Any one item could be allocated to sixteen different entities.

Although FINRA contends that Appellant was "completely aware that the charges were unrelated to the ... Funds' businesses" (FINRA Br. 19), it provides no evidence or documentary proof for this duplicitous statement. FINRA failed to prove Appellant acted in "bad faith" rather than "good faith," which is the "ultimate test of violation of an ethical standard." *Heath v. SEC*, 586 F.3d 122, 135 (2d Cir. 2009).

Accordingly, the NAC Decision must be reversed because FINRA entirely failed to meet its burden of proving that Appellant unethically and in bad faith submitted 1,840 improper expense reimbursement requests.

III. THE NAC ERRONEOUSLY ACCEPTED AND RELIED UPON ALLEGATIONS BY FINRA THAT WERE NOT CHARGED IN THE COMPLAINT BUT WERE REFERENCED BY THE HEARING PANEL BELOW AND ACCEPTED BY THE NAC ON REVIEW, AND ASSERTS NEW ARGUMENTS NOT MADE BELOW

In its opposition brief (page 5), FINRA asserts that Appellant is not the only "controlling person" for whom the Funds are required not to reimburse the General Partner or its parent, and therefore such items as salaries, benefits or expenses of persons in addition to the Appellant cannot be charged to the Funds. FINRA's brief (page 18) then reports that the NAC "gleaned that" none of the 1,840 charges at issue relating to various persons other than the Appellant "could legitimately be expensed to the funds ... because they were controlling persons."

The allegation that there were other controlling persons besides Appellant with allegedly improper expenses was not charged in the Amended Complaint, no probative evidence on this point was adduced, and it is not correct. During the time period at issue, Appellant was the sole "controlling person" of the Commonwealth entities. This issue was addressed in the context of an unrelated settlement of an SEC matter (which by its terms cannot be used for any other purpose), in which the respondents submitted that there were no other controlling persons, and the SEC concluded only that the disclosure of the fact that Appellant was the sole controlling person was not clear, and therefore Appellant agreed to and did pay to the Funds certain amounts to adjust for any possible investor misunderstanding of that fact. This issue was not raised in the Amended Complaint, was not addressed by relevant evidence at the hearing, and "gleaning" by the NAC must be supported by evidence, not supposition.

Indeed, in the Amended Complaint, FINRA did not even allege that *any* 'controlling person" expenses were misallocated. It was Appellant who volunteered during her examination that when she began to look into FINRA's concerns she discovered that her controlling person

expenses had been erroneously allocated to the Funds and had those reversed. (R1621.) This is not the conduct of an unethical person; this is not the conduct of someone acting with bad intent.

Imposing sanctions based upon on an uncharged, unproven, and incorrect claim is clearly erroneous and fundamentally unfair.

IV. FINRA'S OPPOSITION BRIEF ASSERTS UNPROVEN AND ERRONEOUS ASSERTIONS NOT CONTAINED IN THE RECORD AND TWISTS EVIDENCE IN THE RECORD

FINRA's opposition brief is replete with instances where FINRA makes unproven and erroneous assertions not contained in the record or attempts to twist evidence from the record. Appellant will not go through each such example. However, Appellant believes it is important to cite some examples so that the SEC can see how the NAC treated her unfairly by merely following FINRA's misguided lead and consistently ignoring Appellant's contentions and uncontroverted evidence.

For example, at pages 27 and 28 of its brief FINRA asserts that "there were a host of other charges unrelated to the business operation of the Commonwealth Funds that represented Springsteen-Abbott's *personal* spending" (emphasis in original) and that the NAC accurately "stated that Springsteen-Abbott had a practice of 'living off of the Funds' monies instead of her own.'" Here, the NAC and FINRA wrongfully attempt to portray that all of the expenses were for Appellant's *personal* use. As stated above, Appellant's expenses as a controlling person – even if proper *business* expenses – had sometimes been improperly allocated to the Funds and Appellant arranged to have such expenses reimbursed. But to state that such expenses were for her *personal* use rather than for business purposes is nothing more than a twisting of the facts. FINRA has failed to – and cannot – point to a single purchase of clothing or shoes or jewelry or

other personal items for Appellant that support its contention that Appellant was "living off of the Funds' monies instead of her own."

In its opposition brief (at page 6), FINRA asserts at page 6 that "Commonwealth had no written policies or procedures on the allocation process." This is not correct. FINRA gathered, but now ignores, extensive evidence that there was a procedure for the allocation process that had been reviewed consecutively by four independent accounting firms in the context of their audits over many years, a process that was validated in each instance. Testimony regarding the methodology and the involvement of the auditors was presented at the hearing. (Franceschina testimony, page 587, line 7 et seq.; page 610, line 19 et seq.)

FINRA's brief refers (at page 9) to testimony by Appellant at the hearing that a specific "tick" sheet was wrong, citing Appellant's testimony that "It is not correct." However, FINRA fails to disclose that the witness testified that the "tick sheet" (among others) was assembled incorrectly because FINRA provided incorrect information concerning the charge, causing Appellant to focus on the wrong supporting information. In fact, *after* the close of the hearing and after the close of the post-hearing briefing, the DOE entered a new exhibit admitting that more than 150 line items from the schedule were erroneous. Those errors unfairly denied Appellant the opportunity to effectively address the incorrectly listed items during the hearing.

CONCLUSION

Accordingly, for the reasons set forth above and in Appellant's moving brief, Appellant respectfully submits that the NAC Decision should be reversed.

Dated: January 11, 2017

Respectfully submitted,

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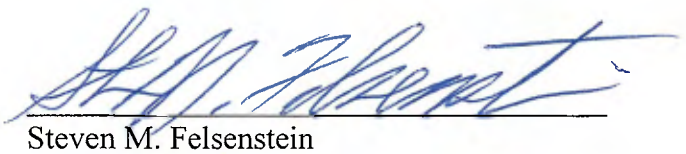
CERTIFICATE OF COMPLIANCE

I, Steven M. Felsenstein, certify that the foregoing Reply Brief of Appellant under Application for Review (File No. 3-17560) complies with the length limitation set forth in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4744 words.



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January 11, 2017

CERTIFICATE OF SERVICE

I, Steven M. Felsenstein, certify that on this 11th day of January, 2017, I caused a copy of the foregoing Appellant's Reply Brief (File No. 3-17560) to be sent via Registered Email and overnight express delivery to:

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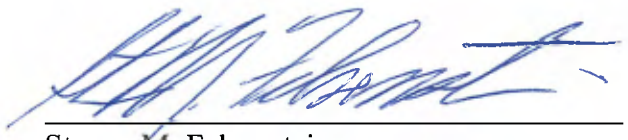
Service was made on the U.S. Securities and Exchange Commission and on FINRA's counsel by overnight delivery service and electronic mail between the offices of Appellant's counsel and the counsel for FINRA.



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